

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

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|----------------------------------|---|--|
| BEATRICE WILLIS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 3:05-CV-1019-W |
| |) | |
| SEARS, ROEBUCK & CO., |) | |
| |) | |
| Defendant. |) | |

**DEFENDANT'S MOTION TO STRIKE THE PLAINTIFF'S BRIEF FILED IN
RESPONSE TO DEFENDANT'S REPLY BRIEF**

COMES NOW the defendant, Sears, Roebuck and Co. ("Sears"), and moves this Court to strike the plaintiff's brief filed in response to the defendant's reply brief in support of its motion for summary judgment. In support of its motion, Sears states as follows:

1. On October 24, 2005, the plaintiff filed a single claim of race discrimination pursuant to Title VII of the Civil Rights Act of 1964, as amended, based solely on her termination. The defendant answered the plaintiff's Complaint on December 5, 2005, generally denying all material allegations.

2. On March 14, 2006, the Court entered an Order setting forth a briefing schedule for the filing of dispositive motions. The Order permits a party to file for summary judgment, for the non-moving party to file a response to this motion, and for the moving party to then reply to the non-movant's response. The Order does not allow for the non-moving party to respond to the moving party's reply.

3. In compliance with the Court's Order, the defendant filed a Motion for Summary Judgment as well as a brief and evidentiary materials in support of its motion on October 16, 2006.

4. On January 22, 2007, the plaintiff filed a brief opposition to the defendant's Motion for Summary Judgment, and on February 12, 2007, the defendant filed a reply brief in response to the plaintiff's opposition.

5. On February 21, 2007, the plaintiff then filed a response to the defendant's reply brief, which was not contemplated the Court's March 14, 2006, Order or any other Order issued by the Court. Additionally, the plaintiff did not obtained leave from the Court to file any such response.

6. Because the plaintiff's response to the defendant's reply brief is not permitted by the Court's March 14, 2006, Order, or any other Court order, and the plaintiff has not otherwise properly obtained leave of the Court to file such a response, the defendant requests that the court strike the plaintiff's February 21, 2006 response to the defendant's reply brief and not consider it when ruling on the defendant's motion for summary judgment.

8. In the alternative, the defendant requests that the Court grant the defendant leave to file a response to the plaintiff's response to the defendant's reply brief.

WHEREFORE, PREMISES CONSIDERED, defendant respectfully requests that the Court grant Defendant's Motion to Strike the Plaintiff's Response to the Defendant's Reply Brief and strike the plaintiff's February 21, 2007 response to the defendant reply brief, or in the alternative, permit the defendant to response to the plaintiff's response to its reply brief.

Respectfully submitted,

/s/ MiekeA.Hemstreet

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CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the above and foregoing pleading on counsel by U. S. Mail and filing the foregoing with the Clerk of the Court using the CM/EMF system on this the 23rd day of February, 2007:

T. Robin McIntyre
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Opelika, Al 36801

/s/ Mieke A. Hemstreet

OF COUNSEL